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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,415	11/13/2001	Curtis Miller	1554-AB	2984
23595 7590 08/08/2007 NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			EXAMINER KOHARSKI, CHRISTOPHER	
			ART UNIT 3763	PAPER NUMBER
			MAIL DATE 08/08/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/008,415

Applicant(s)

MILLER ET AL.

Examiner

Christopher D. Koharski

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Examiner acknowledges the RCE filed 5/16/2007 in which claims 1-3 were amended. Currently claims 1-15 and 17-19 are pending for examination in this application. Examiner acknowledges and accepts amended drawings including figures 8-13.

Claim Objections

Claims 13-15 and 17 are objected to because of the following informalities: Regarding claims 13-15, they reference "the lumens" which lack antecedent basis in the independent claim 1. Regarding claim 17, this claim depends from cancelled claim 16, for the purposes of examination Examiner will assume that this claim depends from claim 15. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 13-15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Zinger (5,810,885). Zinger discloses a device for applying one or several fluids to body tissue.

Regarding claims 1-8, 13-15 and 17, Zingler discloses an adhesive applicator system (Figure 1) comprising a first syringe (a) for storing a second solution, a second

syringe (b) for storing a second solution, a compressed gas source (31) (col 4, ln 45-55), an applicator (Figure 1) including a manifold (9) and a mixing tip (11), the manifold fluidly connected to the both the first and second syringes through lumens (25a, 26a) that extend past the manifold for selectively receiving the first and second solution in a separated manner (Figure 2) and providing an expulsion port (15-17) for each solution through which the solutions separately exit the applicator without mixing prior to exit, the expulsion ports further being enclosed within the mixing tip (11) wherein the mixing tip is connected to the compressed gas source (31) and providing for release (17) of compressed gas around, adjacent to, or proximate the expulsion ports such that the compressed gas when released mixes and propels the solutions and the compressed gas (Figures 1-6).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical

Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-8, 13-15 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Sawhney (6,179,862). Sawhney discloses methods and apparatus for in situ formation of hydrogels.

Regarding claims 1-8, 13-15 and 17, Sawhney discloses an adhesive applicator system (Figure 1A) comprising a first syringe (13) for storing a second solution, a second syringe (14) for storing a second solution, a compressed gas source (17) an applicator (Figure 1A) including a manifold (11) and a mixing tip (12), the manifold fluidly connected to the both the first and second syringes through lumens (20a, 20b) that extend past the manifold for selectively receiving the first and second solution in a separated manner (Figure 1B) and providing an expulsion port (end of 20a, 20b) for each solution through which the solutions separately exit the applicator without mixing prior to exit, the expulsion ports further being enclosed within the mixing tip (12) wherein the mixing tip is connected to the compressed gas source (17) and providing for release (21a) of compressed gas around, adjacent to, or proximate the expulsion ports such that the compressed gas when released mixes and propels the solutions and the compressed gas (Figures 1-2A).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 9-12 and 18-19 are rejected under 35 U.S.C 103(a) as being unpatentable over Zinger (or Sawhney). Zinger (or Sawhney) meets the claim limitations as described above except for syringes being of different sizes and volumes.

Regarding claims 9-12 and 18-19, it would have been obvious for one of ordinary skill in the art to modify either Zinger (or Sawhney) to change the sizes of the syringes, and further more, it would have taken only routine skill in the art to modify the teachings of Zinger (or Sawhney) to accommodate different syringes of the claimed invention. Furthermore, there is no specific criticality or unexpected result being derived from the angles chosen, thus making this modification a matter of design choice, and well within the skill of the ordinary artisan, to determine the optimum results through routine experimentation.

Response to Arguments

Applicant's arguments with respect to claims 1-15 and 17-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Koharski whose telephone number is 571-272-7230. The examiner can normally be reached on 7:30am to 4:00pm EST.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Date:

8/2/07


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